

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

	X	
HEDGECO, LLC <i>d/b/a</i> HEDGECO NETWORKS	)	
	)	
Plaintiff,	)	Case No. 08 CV 0494
	)	(SHS)
	)	
-against-	)	
	)	
JEFFREY SCHNEIDER and	)	
JARED TOREN,	)	
Defendants.	)	
	X	

**Plaintiff's Memorandum of Law in Support of Motion to Compel**

**I. Document Subpoenas were properly issued for the Preliminary Injunction Hearing to occur April 11, 2008, and there has been no compliance.**

This action is for Defendants' breaches of their respective non-circumvent and employment agreements with Plaintiff. Upon motion pursuant to Rule 65, Plaintiff was granted a TRO, and the matter is now scheduled for a hearing on April 11, 2008.

The hearing is to determine whether or not a Preliminary Injunction should be granted in order to continue to prevent Defendants from using Plaintiff's confidential and proprietary information, as well as other relief as set forth in the motion.

Accordingly, Plaintiff has sought for the hearing certain documents demanded in subpoenas, duly served upon Defendants and their business, Onyx Global Advisors ("Onyx") collectively attached hereto as **Exhibit A** (subpoenas and returns of service). The document production sought by Plaintiff is particularized in "**List A**" to the foregoing subpoenas, and is attached hereto as **Exhibit B**.

Pursuant to FRCP 45 (“SUBPOENA”) subpoenas can be and were issued for document production, as follows:

- (A) for attendance at a **hearing** or trial, ... where the **hearing** or trial is to be held; [...]
- (C) for production or inspection [...]
- (2) Command to Produce Materials or Permit Inspection.
- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, **hearing**, or trial. (emphasis added). FRCP 45.

As the next appearance is a hearing, this is not a Rule 26 discovery matter *w/r/t* documents, as postulated in correspondence from the defense. It is a Rule 45 subpoena matter. The return date of March 17, 2008 has now passed without compliance or even proper objection thereto, to date.

## **II. Despite “Good Faith” there has been no response.**

A document retention letter was provided to Opposing Counsel on March 3, 2008 (**Exhibit C**). The proposed subpoenas and List A were provided to Defense Counsel on March 12, 2008 (**Exhibit D**).

Except for an unwarranted offer *to trade* documents in lieu of proper compliance, there has been nothing of substance from the defense to date; not a single document. In fact, the Defense stated: “If you are not going to produce documents, my clients won’t either.” Email from Defense Attorney dated March 24, 2008. Moreover, by that date (3/24/08) Defendants’ subpoena compliance should have been completed. (Plaintiff is in fact, endeavoring to produce documents pursuant Defendants’ demands dated March 24, 2008.)

### III. Conclusion

Absent this Court's intervention to compel production of the duly subpoenaed documents in List A (**Exhibit B**), clearly the Defendants and Onyx will not comply as they must.

**Wherefore**, the Motion to Compel should respectfully be granted in its entirety, together with costs, disbursements, reasonable attorney's fees, and for such other and further relief deemed appropriate in the discretion of the court.

Dated: March 31, 2008  
New York, NY

Respectfully submitted,



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**PLAINTIFF'S MOTION TO COMPEL  
MEMORANDUM OF LAW**

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